

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division**

CSX TRANSPORTATION, INC., et al.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 2:18CV530-MSD-LRL
	)	
NORFOLK SOUTHERN RAILWAY	)	
COMPANY, et al.,	)	
	)	
Defendants.	)	
_____	)	

**CONSENT MOTION TO EXCUSE DEFENDANTS HALL, HURLBUT,  
AND MERILLI’S IN-PERSON ATTENDANCE AT SETTLEMENT  
CONFERENCE AND MEMORANDUM IN SUPPORT**

Defendants Jerry Hall, Thomas Hurlbut, and Philip Merilli (“Individual Defendants”), by counsel, pursuant to Paragraph 3 of the Settlement Conference Order entered November 5, 2019 (ECF No. 81) and E.D. Va. Loc. R. 83.6(G), and with the consent of all parties in this case, move the Court for the entry of an order excusing their in-person participation at the settlement conference scheduled to occur on March 24, 2020, and permitting their participation by telephone. In support of this Motion, the Individual Defendants state the following:

1. The Individual Defendants have been named only in Count VI of the Complaint, a derivative claim alleging breach of fiduciary duty arising from their service as members of the board of directors of Defendants Norfolk and Portsmouth Belt Line Railroad (“NPBL”).
2. The Individual Defendants are no longer members of the NPBL board of directors. Their terms of service were as follows:
  - a. Defendant Tom Hurlbut: December 18, 2013, to August 6, 2019.
  - b. Defendant Phillip Merilli: January 2016 to May 1, 2019.

c. Defendant Jerry Hall: January 2018 to December 2018.

3. None of the Individual Defendants reside in this judicial district. Mr. Hurlbut currently lives and works in Atlanta, Georgia. Mr. Merilli and Mr. Hall are retired and live in Pittsburg, Pennsylvania and Atlanta, Georgia, respectively.

4. The parties agree that the Individual Defendants' telephonic participation will not impede the progress of settlement discussions during the settlement conference.

5. Counsel for the Individual Defendants will appear at the settlement conference with full authority to settle this case on their behalf.

6. All parties in this case consent to this motion.

WHEREFORE, the Individual Defendants respectfully move the Court for the entry of an Order excusing them from appearing in person at the March 24, 2020 settlement conference and permitting them to appear by telephone and by counsel with full authority to settle on their behalf. A Proposed Order granting this relief is filed herewith.

Dated: January 13, 2020

Respectfully submitted,

JERRY HALL, THOMAS HURLBUT,  
and PHILIP MERILLI

By: /s/ John M. Erbach

Hugh M. Fain, III (VSB #26494)

hfain@spottsfain.com

M. F. Connell Mullins, Jr. (VSB # 47213)

cmullins@spottsfain.com

John M. Erbach (VSB #76695)

jerbach@spottsfain.com

SPOTTS FAIN PC

411 East Franklin Street, Suite 600

Richmond, Virginia 23219

(804) 697-2000 (Telephone)

(804) 697-2100 (Facsimile)

*Counsel for Defendants Jerry Hall, Thomas  
Hurlbut, and Philip Merilli*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 13<sup>th</sup> day of January, 2020, I will electronically file the foregoing with the Clerk of Court using CM/ECF system, which will then send a notification of such filing (NEF) to all counsel of record.

By: \_\_\_\_\_/s/  
John M. Erbach (VSB No. 76695)  
jerbach@spottsfain.com  
SPOTTS FAIN PC  
411 East Franklin Street, Suite 600  
Richmond, Virginia 23219  
(804) 697-2000 (Telephone)  
(804) 697-2100 (Facsimile)  
*Counsel for Defendants Jerry Hall, Thomas  
Hurlbut, and Philip Merilli*